

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

KENYA SPLOND,

Case No. 2:23-cv-00451-GMN-BNW

Petitioner,

V.

ORDER

GABRIELA NAJERA, *et al.*,

Respondents.

Petitioner Kenya Splond, a *pro se* Nevada prisoner, commenced this habeas action by filing a petition for Writ of Habeas Corpus (ECF No. 1). This habeas matter is before the Court for review under the Rules Governing Section 2254 Cases.¹ For the reasons discussed below, the Court directs service of the petition and instructs Respondents to respond.

Pursuant to Habeas Rule 4, the assigned judge must examine the habeas petition and order a response unless it “plainly appears” that the petitioner is not entitled to relief. *See Valdez v. Montgomery*, 918 F.3d 687, 693 (9th Cir. 2019). This rule allows courts to screen and dismiss petitions that are patently frivolous, vague, conclusory, palpably incredible, false, or plagued by procedural defects. *Boyd v. Thompson*, 147 F.3d 1124, 1128 (9th Cir. 1998); *Hendricks v. Vasquez*, 908 F.2d 490, 491 (9th Cir. 1990) (collecting cases).

Petitioner challenges a conviction and sentence imposed by the Eighth Judicial District Court for Clark County (“state court”). *State of Nevada v. Kenny Splond*, Case No. C-14-296374-1.² On February 13, 2017, the state court entered a judgment of conviction. The Nevada Supreme Court affirmed the conviction. In April 2019, Petitioner filed a state petition for writ of habeas

¹ All references to a “Habeas Rule” or the “Habeas Rules” in this order identify the Rules Governing Section 2254 Cases in the United States District Courts.

² The Court takes judicial notice of the online docket records of the Eighth Judicial District Court and Nevada appellate courts. The docket records may be accessed by the public online at: <https://www.clarkcountycourts.us/Anonymous/default.aspx> and at: <http://caseinfo.nvsupremecourt.us/public/caseSearch.do>.

1 corpus. The state court denied post-conviction relief. Petitioner filed a post-conviction appeal.
2 The Nevada Supreme Court affirmed in part, reversed in part, and remanded to the state court to
3 hold an evidentiary hearing to determine whether counsel was ineffective. On December 20, 2022,
4 the state court entered an second amended judgment of conviction for conspiracy to commit
5 robbery, three counts of burglary while in possession of a firearm, three counts of robbery with
6 use of a deadly weapon, and one count of possession of stolen property.

7 On March 24, 2023, Petitioner initiated this federal habeas corpus proceeding *pro se*.
8 (ECF No. 1.) Having conducted an initial review, the Court will direct service of the petition and
9 a response.

10 **IT IS THEREFORE ORDERED:**

- 11 1. The Clerk of the Court is directed to add Aaron Ford, Attorney General of the State of
12 Nevada, as counsel for Respondents and to provide Respondents an electronic copy of
13 all items previously filed in this case by regenerating the Notice of Electronic Filing to
14 the office of the AG only.
- 15 2. Respondents will have **60 days** from the date of this order to appear in this action and
16 answer or otherwise respond to the petition.
- 17 3. If Respondents file an answer to the petition, Petitioner may file a reply within **30 days**
18 from the date the answer is filed and served. If Respondents file a motion to dismiss
19 instead of an answer, the parties will brief the motion in accordance with LR 7-2 and
20 7-3 of the Local Rules of Practice.
- 21 4. Any procedural defenses Respondents raise in this case must be raised together in a
22 single consolidated motion to dismiss. Procedural defenses omitted from such motion
23 to dismiss may be subject to waiver. Respondents will not file a response in this case
24 that consolidates their procedural defenses, if any, with their response on the merits,
25 except pursuant to 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking
26 merit. If Respondents seek dismissal of unexhausted claims under § 2254(b)(2), they
27 must do so within the single motion to dismiss, not in the answer, and specifically direct
28 their argument to the standard for dismissal under § 2254(b)(2) as set forth in *Cassett*

v. Stewart, 406 F.3d 614, 623–24 (9th Cir. 2005). In short, no procedural defenses, including exhaustion, will be included with the merits in an answer. All procedural defenses, including exhaustion, instead must be raised by motion to dismiss.

5. In any answer filed on the merits, Respondents must specifically cite to and address the applicable state court written decision and state court record materials, if any, regarding each claim within the response as to that claim.
6. Respondents must file the state court exhibits relevant to their response to the petition, in chronological order.
7. All state court records and exhibits must be filed in accordance with LR IA 10-3 and LR IC 2-2 and include a separate index identifying each exhibit by number or letter. The index must be filed in CM/ECF's document upload screen as the base document to receive the base docket number (*e.g.*, ECF No. 10). Each exhibit must then be filed as "attachments" to the base document—the index—to receive a sequenced sub-docket number (*e.g.*, Exhibit A (ECF No. 10-1), Exhibit B (ECF No. 10-2), Exhibit C (ECF No. 10-3), and so forth). If the exhibits will span more than one filing, the base document in each successive filing must be either a copy of the index or volume cover page. *See* LR IC 2-2(a)(3)(A).
8. Notwithstanding LR IC 2-2(g), paper copies of any electronically filed exhibits *need not* be provided to chambers or to the staff attorney, unless later directed by the court.

DATED: March 31, 2023

~~GLORIA M. NAVARRO~~
UNITED STATES DISTRICT JUDGE